Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Rules and Policies on Foreign Participation	)	IB Docket No. 97-142
in the U.S. Telecommunications Market	)	

COMMENTS OF AMERITECH

I. Introduction and Summary

Ameritech submits these Comments in the above-captioned matter, in support of the Federal Communications Commission's ("Commission's") efforts to review and update its rules regarding entry by foreign carriers into the U.S. telecommunications marketplace. As embodied in the recently-adopted Order and Notice of Proposed Rulemaking[1], the Commission's current efforts to implement the Basic Telecom Agreement ("Agreement") recently negotiated under the auspices of the World Trade Organization will fulfill the United States' commitment to open the local, long distance and international segments of the telecommunications marketplace to competition. The Agreement, as signed by 69 countries, will

[1] In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97-142, Order and Notice of Proposed Rulemaking, FCC 97-195, rel. June 4, 1997 (hereinafter "NPRM").

eventually open much of the global market to a broad range of competitive entry.

In the NPRM, the Commission reaffirmed the three goals of its regulation of the U.S. international telecommunications market. These are:

1. "to advance the public interest by promoting effective competition in the U.S. telecommunications services market";

2. "to prevent anticompetitive conduct in the provision of international services or facilities"; and

3. "to encourage foreign governments to open their communications markets," so as to ensure that U.S. consumers of international services are not "denied the maximum benefits of reduced rates, increased quality, and innovation."[2]

Ameritech believes that the general approach proposed in the NPRM, supplemented by the measures suggested herein, will achieve the first two of the Commission's stated goals in this matter. As to the third goal, the Commission should replace the former "effective competitive opportunities" ("ECO") test with a review of whether the home countries of potential foreign competitors seeking U.S. market entry have acted to permit multiple carrier entry into their own domestic markets. This approach will permit the Commission to ensure the continued cooperative efforts of signatory nations to permit meaningful entry without unnecessarily encumbering potential foreign entrants to the U.S. marketplace.

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[2] NPRM, at 12-13 (¶¶ 25-27) (emphasis added).

II. Post-entry sanctions will not achieve the Commission's stated goal of ensuring continued cooperation by foreign governments.

In tentatively concluding that elimination of the ECO test for all WTO members -- including "WTO Member countries that have made no, poor, or unfulfilled commitments towards opening their markets to effective competition"[3] -- the Commission seeks comment on "whether we should examine the extent of a WTO Member's commitment or its implementation of its commitment in determining whether a particular application presents competition problems that must be addressed."[4] The Commission has every right and duty to do so, and Ameritech strongly urges such a review as part of every such application it reviews.

Of the 69 WTO Member countries that have made binding commitments to open their telecommunications markets, 17 have made no commitments to open their international services markets.[5] Nevertheless, the Commission has tentatively concluded that the ECO test should be eliminated from consideration (regarding Section 214 construction applications, Section 310(b) applications for transfer of radio licenses, and determinations of whether U.S. carriers will be permitted to enter into alternative settlement arrangements) with carriers from all 69 of these countries. In reaching this conclusion, the Commission relied in part upon the effectiveness of various post-entry measures, including enforcement by WTO Members of the Agreement's requirements that their domestic regulations be "reasonable, objective, and impartial;" [6] post-entry

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[3] Ibid., at 19 (¶ 47).

[4] Ibid.

[5] Ibid., at 16 (¶ 35).

[6] Ibid. (¶ 36).

safeguards such as revocation of authority for rules violations; and denial of authorization for adjudicated violations of U.S. antitrust law, fraudulent representations to U.S. governmental units, and criminal misconduct involving false statements or dishonesty. [7]

Such fallback measures may or may not prove effective on an after-the-fact basis in controlling further anticompetitive conduct by foreign carriers already in the U.S. marketplace. By their terms, however, they cannot and will not fulfill the Commission's goal of encouraging foreign governments to open their communications markets to U.S.-based competitors for several reasons. Clearly, all the proposed after-the-fact sanctions would only apply to individual foreign business enterprises rather than to any governmental body in the applicants' home countries.[8] Thus, these proposed after-the-fact sanctions cannot be effective in "encouraging" foreign governments to do anything.

In reaching these tentative conclusions, the Commission also notes that "(e)nforcement of the antitrust laws is also available to remedy anticompetitive conduct or effects."[9] Although such sanctions may in some cases eventually be applied with great force and effect, they are not notoriously swift in application. Perhaps for this reason, they have historically been considered a supplement to, rather than a substitute for, federal policy-setting mechanisms. Unfortunately, given the relative ease

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[7] Ibid. (¶¶ 38-9).

[8] Under the General Agreement on Trade in Services -- the framework under which the Agreement was concluded -- the business practices of Member nations may be the subject of formal consultations between them. General Agreement on Trade in Services, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 33 I.L.M. 1167 (1994) (hereinafter "GATS"), art. IX. Such consultations would be initiated on behalf of the United States by the U.S. Trade Representative.

[9] NPRM, at 17 (¶ 38).

and speed of market entry afforded potential foreign entrants into the U.S. marketplace, the use of antitrust remedies for this particular purpose would likely be neither cost-effective nor timely.

Moreover, the natural effect of the Commission's proposed approach would be to encourage the use of private litigation as the preferred means to achieve the Commission's stated goals. This would appear to be an ineffective and burdensome approach, saddling American business enterprises with the cost and effort of piecemeal pursuit of U.S. policy.

III. The Commission's proposed approach would put the burden of proof on domestic carriers seeking to challenge U.S. market entry by foreign carriers.

As the Commission has aptly noted,[10] the General Agreement on Trade in Services contains a provision requiring "Most Favoured Nation" treatment for all Member nations; i.e., a requirement that:

> "each Member shall accord immediately and unconditionally to services and service suppliers of any other Member, treatment no less favourable than that it accords to like services and service suppliers of any other country." [11]

A related obligation under the GATS further requires nondiscrimination between domestic carriers and carriers of other Member nations, stating in relevant part that:

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[10] Ibid., at 10 (¶ 22).

[11] GATS, art. II.

> "each Member shall accord to services and service suppliers of any other member, treatment no less favourable than that it accords to its own like services and service suppliers."[12]

In view of these requirements, the Commission has tentatively concluded that it should cease to apply an ECO test to section 214 applications[13] and section 310(b) applications for foreign ownership of radio licensees[14] filed by carriers from Member countries, and to any determination whether a U.S. carrier should be permitted to enter into alternative settlement arrangements with carriers from WTO Member nations.[15] In all three of these situations, the Commission proposes to place the burden upon carriers seeking to deny such applications, by relying upon a "rebuttable presumption" in favor or granting such applications; i.e., presuming that granting such applications by carriers from Member nations would be in the public interest.

The Commission's proposed approach would put the burden of going forward, as well as a heavy -- if not unsustainable -- burden of proof, upon a U.S. carrier seeking to challenge entry by a foreign competitor from a country whose own domestic market-entry policies do not permit entry by multiple competitors. In the case of a section 214 application, the party challenging the grant "would be required to show that grant of the application would pose a very high risk to competition in the U.S. telecommunications market that could not be addressed by conditions we

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[12] GATS, article XVII (¶ 1).

[13] NPRM, at 19 (¶ 45).

[14] NPRM, at 31 (¶ 74).

[15] Ibid., at 23 (¶ 50).

could impose on the authorization."[16] In the case of a section 310 application for foreign ownership of a radio license, the same "very high risk to competition" burden of proof is topped off by a requirement of "serious concerns raised by the Executive Branch."[17]

These proposed burdens of proof are significant under prevailing U.S. legal precedent. The very use of a relative term such as "very high risk" raises a threshold question to be considered by a potential challenger to a requested grant; how high a risk is "very high"? Likewise, what risk can be imagined by the best minds that could not conceivably be addressed by some form of condition imposed by the Commission? The proposed burdens of proof would have a clear chilling effect, as they would not only shape the arguments to be used by potential challengers but would also necessarily cause them to consider very carefully whether to even attempt to bear such a burden.

IV. Conclusion.

For the above reasons, the Commission should modify its proposed approach, and replace the prior ECO test with an assessment of whether the home countries of potential foreign competitors seeking U.S. market entry have acted to permit multiple carrier entry into their own domestic markets. This approach will ensure the promotion of the Commission's

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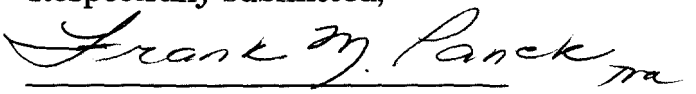
[16] Ibid., at 15 (¶ 32) (emphasis added).

[17] Ibid., at 31 (¶ 75).

goal of encouraging foreign governments to open their international communications markets, while not unnecessarily encumbering potential foreign entrants to the U.S. marketplace.

Respectfully submitted,



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